

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MAGDALENO QUIRALTE and RAQUEL
QUIRALTE, husband and wife,

 Plaintiffs,

 vs.

SUTTON FUNDING, LLC; HOMEQ
SERVICING; MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS; EQUIFIRST
CORPORATION; NATIONAL DEFAULT
SERVICING CORPORATION; DOES I–V,
inclusive; and ROE ENTITIES I–X, inclusive,

 Defendants.

Case No.: 2:09-cv-02128-RLH-RJJ

ORDER

(Motion to Dismiss–#7; Motion to Strike
Punitive Damages–#9)

Before the Court is Defendant HomeQ Servicing, Mortgage Electronic Registration Systems (“MERS”), and Sutton Funding’s **Motion to Dismiss** (#7) and **Motion to Strike Punitive Damages** (#9), both filed April 19, 2010. Plaintiffs Magdaleno Quiralte and Raquel Quiralte (“the Quiraltés”) have not opposed either of these motions.

BACKGROUND

On June 15, 2007, the Quiraltés purchased the property located at 870 Hyattsville Street in Las Vegas, Nevada through an adjustable-rate mortgage provided by HomeQ Servicing. Sometime after entering into the mortgage agreement, the Quiraltés fell behind on their monthly

1 loan payments. On February 17, 2009, a Notice of Default and Election to Sell was filed with the
 2 Clark County Recorder's Office. In June 2009, Defendant National Default Servicing Corporation
 3 sold the property to Defendant Sutton Funding at a trustee's sale.

4 On September 3, 2009, the Quiraltos filed suit in Nevada state court against
 5 Defendants alleging claims for (1) declaratory relief; (2) violation of Nevada's Unfair Lending
 6 Practices statute; (3) consumer fraud and mortgage lending fraud; (4) fraud; (5) violation of the
 7 federal Fair Debt Collections Practices Act; (6) breach of the implied covenant of good faith and
 8 fair dealing; (7) breach of fiduciary duty; and (8) slander of title. On November 5, HomeQ and
 9 MERS removed the case to this Court on the basis of federal diversity jurisdiction. Now before
 10 the Court is HomeQ, MERS, and Sutton Financing's Motion to Dismiss and Motion to Strike
 11 Punitive Damages. For the reasons discussed below, the Court grants both of Defendants'
 12 Motions.

13 DISCUSSION

14 I. Legal Standard

15 A court may dismiss a plaintiff's complaint for "failure to state a claim upon which
 16 relief can be granted." Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide "a short
 17 and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a).
 18 While a pleading generally need not contain detailed allegations, it must allege sufficient facts "to
 19 raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,
 20 555 (2007). A complaint does not allege sufficient facts to raise a right to relief above the
 21 speculative level if it contains nothing more than "labels and conclusions" or a "formulaic
 22 recitation of the elements of a cause of action." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009)
 23 (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). Instead, in order to survive a motion to
 24 dismiss, a complaint must contain sufficient factual matter to "state a claim to relief that is
 25 plausible on its face." *Iqbal*, 129 S. Ct. at 1949 (internal citation omitted).

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1 In *Ashcroft v. Iqbal*, the Supreme Court provided a two-step approach for district
 2 courts to apply when considering motions to dismiss. First, the court must accept as true all
 3 factual allegations in the complaint. *Id.* at 1950. A court does not, however, assume the truth of
 4 legal conclusions merely because the plaintiff casts them in the form of factual allegations. *Id.* at
 5 1950; *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003). Mere recitals
 6 of the elements of a cause of action, supported only by conclusory statements, also do not suffice.
 7 *Iqbal*, 129 S. Ct. at 1949. Second, the court must consider whether the factual allegations in the
 8 complaint allege a plausible claim for relief. *Id.* at 1950. “A claim has facial plausibility when the
 9 plaintiff pleads factual content that allows the court to draw a reasonable inference that the
 10 defendant is liable for the alleged misconduct.” *Id.* at 1949. Thus, where the complaint does not
 11 permit the court to infer more than the mere possibility of misconduct, the complaint has
 12 “alleged—but not shown—that the pleader is entitled to relief.” *Id.* (internal quotation marks
 13 omitted). When the claims in a complaint have not crossed the line from conceivable to plausible,
 14 plaintiff’s complaint must be dismissed. *Twombly*, 550 U.S. at 570.

15 **II. Motion to Dismiss and Motion to Strike Punitive Damages**

16 The Court first notes that Plaintiffs have not responded to Defendants’ Motion to
 17 Dismiss or Motion to Strike Punitive Damages. Under Local Rule 7–2, if a party files a motion
 18 with the court, the party against whom the motion is filed must file points and authorities in
 19 opposition to the motion within fifteen days after service of the motion. LR 7-2(b). The failure of
 20 a party to file points and authorities in opposition to any motion constitutes a consent to the
 21 Court’s granting of the motion. LR 7-2(d).

22 Defendants filed and served their Motions on April 19, 2010; thus, the Quiraltés
 23 were required to respond no later than May 5. The Quiraltés, however, have failed to file any
 24 response at all. Therefore, pursuant to the Local Rules, the Court has the authority to dismiss
 25 Plaintiff’s case. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (failure to follow the district
 26 court’s local rules is a proper ground for dismissal).


1 In addition to the Quiralt's failure to comply with the Local Rules, the Court
2 grants Defendants' Motion to Dismiss and Motion to Strike on their merits. The Court has
3 reviewed Defendants' Motions and concludes that they should be granted based on the arguments
4 set forth therein. The Court therefore grants Defendants' Motion to Dismiss and Motion to Strike
5 and incorporates their arguments *in haec verba*.

6 **CONCLUSION**

7 Accordingly, and for good cause appearing,

8 IT IS HEREBY ORDERED that Defendants HomeQ Servicing, MERS, and Sutton
9 Funding's Motion to Dismiss (#7) and Motion to Strike Punitive Damages (#9) are GRANTED.
10 These Defendants are hereby dismissed from this case.

11 Dated: July 19, 2010.

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15 **ROGER L. HUNT**
16 **Chief United States District Judge**
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